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Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Brenda Whittaker, an individual,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

Paul Moss Insurance Agency, LLC d/b/a
Epiq Insurance Agency, an Ohio limited
liability company,

Defendant.

Case No. 3:22-cv-08077-SMB

**JOINT PROPOSED CASE
MANAGEMENT REPORT**

FAC Filed: October 6, 2021

Plaintiff Brenda Whittaker (“Plaintiff” or “Whittaker”) and Defendant Paul Moss Insurance Agency, LLC d/b/a Epiq Insurance Agency (“Defendant” or “Epiq”) jointly submit this Proposed Case Management Report pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, and the Court’s Order Setting Rule 16 Scheduling Conference (dkt. 12).

1. The parties who attended the Rule 26(f) meeting and assisted in developing the Case Management Report:

On behalf of Plaintiff Brenda Whittaker: Taylor T. Smith

On behalf of Defendant Paul Moss Insurance Agency, LLC d/b/a Epiq Insurance Agency:
Leah McKeever and Sitar Bhatt

1 **2. A list of the parties in the case, including any parent corporations or entities**
2 **(for recusal purposes):**

3 Plaintiff: Brenda Whittaker and the alleged Class

4 Defendant: Paul Moss Insurance Agency, LLC d/b/a Epiq Insurance Agency

5 **3. A short statement of the nature of the case:**

6 Plaintiff's Position: The case challenges Defendant's alleged violations of the
7 Telephone Consumer Protections Act, 47 U.S.C. § 227, *et seq.* ("TCPA" or the "Act"),
8 specifically their practice of sending unsolicited telemarketing calls to cellular telephone
9 numbers registered on the National Do Not Call Registry.

10 The facts are straightforward: Plaintiff registered her cellular telephone number on
11 the DNC Registry on December 19, 2017. Notwithstanding this registration, Defendant
12 placed at least three (3) calls to Plaintiff to solicit her to purchase Defendant's good and
13 services. All of the calls were placed for the purpose of soliciting Plaintiff to purchase
14 Defendant's products and services. Plaintiff also did not provide any prior express
15 consent to receive the calls at issue. Accordingly, Plaintiff, on behalf of herself and a
16 Class of similarly situated individuals, brings this action to put an end to Defendant's
17 serial violations of the TCPA.

18
19 Defendant's Position: Defendant denies it violated the TCPA. Plaintiff provided
20 express consent for Defendant to contact plaintiff. Defendant did not contact plaintiff
21 prior to receiving consent. Further, plaintiff did not revoke the consent prior to Defendant
22 contacting plaintiff. Defendant denies there are similarly situated individuals.

23
24 **4. The jurisdictional basis for the case, describing the basis for jurisdiction and**
25 **citing specific statutes:**

26 This case is an alleged class action brought under the TCPA, a federal statute. As
27 such, the Court has original jurisdiction under 28 U.S.C. § 1331. Further, Plaintiff alleges
28 that this Court has jurisdiction over the subject matter of this action under the Class

1 Action Fairness Act, 28 U.S.C. § 1332(d), *et seq.* (“CAFA”) because there are over 100
 2 putative class members, there is minimal diversity, and there is over \$5,000,000 at issue
 3 when the claims of the Class are aggregated. None of the exceptions to CAFA applies.

4 Defendant agrees this Court has original jurisdiction under 28 U.S.C. § 1331, but
 5 disputes plaintiff’s allegation the Court has jurisdiction arising under the CAFA as
 6 plaintiff has not established a class of more than 100 members nor more than \$5,000,000
 7 in controversy.

8
 9 **5. Any parties which have not been served and an explanation of why they have**
 10 **not been served, and any parties which have been served but have not**
 11 **answered or otherwise appeared:**

12 All parties have been served and there are no issues with service.

13 **6. A statement of whether any party expects to add additional parties to the case**
 14 **or otherwise to amend pleadings:**

15 Plaintiff’s Position: At this time, Plaintiff does not expect to add any additional
 16 parties or amend the pleadings. However, Plaintiff reserves the right to amend to add
 17 additional parties that may be identified in discovery. Plaintiff requests a four month
 18 deadline to amend pleadings.

19 Defendant’s Position: Defendant reserves the right to amend to add additional
 20 parties that may be identified in discovery. Defendant requests a four month deadline to
 21 amend pleadings.

22
 23 **7. A listing of contemplated motions and a statement of the issues to be decided**
 24 **by those motions:**

25 Plaintiff’s Position: Plaintiff intends to move for class certification following an
 26 appropriate period of class discovery. Plaintiff also intends to move for summary
 27 judgment after a class has been certified. Plaintiff may also need to file a motion to
 28 amend the pleadings and discovery motions as appropriate.

1 Defendant's Position: Defendant intends to move for summary judgment after
2 initial discovery is completed. Defendant also may file a motion to amend the pleadings
3 and discovery motions as appropriate.
4

5 **8. Whether the case is suitable for reference to a United States Magistrate Judge**
6 **for a settlement conference or trial:**

7 The parties do not consent to referring any aspect of the case to a United States
8 Magistrate Judge.

9 **9. The status of any related cases pending before other courts or other judges of**
10 **this Court:**

11 The parties are not aware of any related cases.

12 **10. A discussion of any issues relating to preservation, disclosure, or discovery of**
13 **electronically stored information, including the parties' preservation of**
14 **electronically stored information and the form or forms in which it will be**
15 **produced (see Rules 16(b)(3), 26(f)(3)):**

16 During the Rule 26(f) conference, counsel for the Parties discussed the potential
17 ESI implicated in this case. The Parties confirm that any relevant ESI is being
18 appropriately preserved. Should discovery proceed, the Parties are committed to working
19 together to reduce the costs of ESI.

20 **11. A discussion of any issues relating to claims of privilege or work product (see**
21 **Rules 16(b)(3), 26(f)(3)):**

22 The parties agree to prepare and produce a privilege log with respect to all
23 documents, electronically stored information, things and oral communications withheld
24 on the basis of a claim of privilege or work product protection except the following:
25 written and oral communications between a party and its counsel after commencement of
26 the action and in anticipation of litigation and work product material created after
27 commencement of the action and in anticipation of litigation.

28 Defendant will disclose its relevant confidential internal policies and procedures

related to telemarketing in accordance with a stipulated confidentiality and protective order agreement.

12. A discussion of whether an order under Federal Rule of Evidence 502(d) is warranted in this case:

Plaintiff's Position: Plaintiff does not request a Rule 502(d) Order

Defendant's Position: Defendant requests a Rule 502(d) Order.

13. A discussion of necessary discovery. This discussion should take into account the December 1, 2015 amendments to Rule 26(b)(1), and should include:

a. The extent, nature, and location of discovery anticipated by the parties and why it is proportional to the needs of the case;

Plaintiff's Position: Discovery is needed regarding certain threshold issues that will materially advance the case:

- (1) Whether Defendant procured prior express invitation or permission to place the calls at issue;
- (2) Whether Defendant placed calls to consumers whose numbers are registered on the National DNC Registry *en masse*;
- (3) Whether the proposed class can be certified as a class action in accordance with Federal Rules of Civil Procedure 23;
- (4) Whether Plaintiff is entitled to injunctive relief;
- (5) If Defendant violated the TCPA, whether it did so willfully; and
- (6) Defendant's affirmative defenses.

Defendant's Position: Defendant intends to seek discovery to establish the following:

- (1) Plaintiff expressly consented to receive telemarketing communications;
- (2) Defendant did not violate the TCPA;
- (3) Plaintiff fails to establish a putative class pursuant to Fed. R. Civ. P. Rule 23 and CAFA;
- (4) Discovery to Dispute plaintiff's allegation;

(5) Defendant's affirmative defenses; and

(6) Defendant reserves the right to expand upon this list as discovery progresses.

b. Suggested changes, if any, to the discovery limitations imposed by the Federal Rules of Civil Procedure;

The parties do not propose any changes to the discovery limitations or length of depositions provided by the Federal Rules of Civil Procedure.

c. The number of hours permitted for each deposition. The parties should consider whether a total number of depositions hours should be set in the case, such as 20 total hours for Plaintiffs and 20 total hours for Defendants. Such overall time limits have the advantage of providing an incentive for each side to be as efficient as possible in each deposition, while also allowing parties to allocate time among witnesses depending on the importance and complexity of subjects to be covered with the witnesses.

The parties do not propose any changes to the hourly limits for depositions set forth in Fed. R. Civ. P. 30(d).

14. Proposed Deadlines

Plaintiff's Position: Discovery should proceed with respect to both class certification and merits issues for a period of ten (10) months. The first eight (8) months will be devoted to written and oral fact discovery. The final two (2) months of this period will be devoted to experts. Following the close of this initial ten (10) month discovery period, the parties will brief class certification. Following a ruling on class certification the Court would hold a subsequent case management conference and establish a schedule for the remainder of the case, including a period for any remaining merits-based discovery, and dates for summary judgment briefing, pre-trial conferences, and the trial.

Plaintiff proposes the following discovery schedule:

<u>Event</u>	<u>Proposed Deadlines</u>
Motion to Amend Pleadings and/or Add	November 18, 2022

Parties	
Exchange Rule 26(a) Initial Disclosures	August 12, 2022
Complete Fact Discovery	March 24, 2023
Plaintiff's Expert Disclosures Due	March 31, 2023
Defendant's Expert Disclosures Due	April 21, 2023
Rebuttal Expert Disclosures Due	May 5, 2023
Complete Expert Discovery	May 26, 2023
Engage in Good Faith Settlement Discussions	March 24, 2023
Plaintiff to File Motion for Class Certification	June 2, 2023
Defendant to File Opposition to Class Certification	June 30, 2023
Plaintiff to File Reply ISO Motion for Class Certification	July 14, 2023
Subsequent Case Management Conference	To be set after a ruling on class certification
File Dispositive Motions	TBD

Defendant's Position:

<u>Event</u>	<u>Proposed Deadlines</u>
Motion to Amend Pleadings and/or Add Parties	November 18, 2022

Exchange Rule 26(a) Initial Disclosures	August 12, 2022
Complete Fact Discovery	March 31, 2023
Plaintiff's Expert Disclosures Due	April 7, 2023
Defendant's Expert Disclosures Due	June 2, 2023
Rebuttal Expert Disclosures Due	July 7, 2023
Complete Expert Depositions	August 11, 2023
Engage in Good Faith Settlement Discussions	July 28, 2023
Plaintiff to File Motion for Class Certification	April 28, 2023
Defendant to File Opposition to Class Certification	May 26, 2023
Plaintiff to File Reply ISO Motion for Class Certification	June 9, 2023
Subsequent Case Management Conference	To be set after a ruling on class certification
File Dispositive Motions	TBD

15. Whether a jury trial has been requested and whether the request for a jury trial is contested (if the request is contested, briefly set forth the reasons):

Plaintiff has demanded a jury trial. Defendant does not contest.

16. The prospects for settlement, including any request of the Court for assistance in settlement efforts:

The Parties do not request Court assistance with settlement talks at this time. The

Parties reserve the right to request a judicial settlement conference after initial discovery has taken place.

17. Any other matters that will aid the Court and parties in resolving this case in a just, speedy, and inexpensive manner as required by Federal Rule of Civil Procedure 1.

There are no additional matters need to be addressed at this time.

Dated: July 19, 2022

By: /s/ Taylor T. Smith
One of Plaintiff's Attorneys

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Counsel for Plaintiff and the Putative Class

Dated: July 19, 2022

By: /s/ Sitar Bhatt

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Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above titled document was served upon counsel of record by filing such papers via the Court's ECF system on July 19, 2022.

/s/ Taylor T. Smith